

REMARKS

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claim 1 has been amended. Claims 1-24 are pending.

CLAIM AMENDMENTS

The amendment made to claim 1 is to more clearly and precisely claim the subject matter of the invention and not to overcome the references cited in the Office Action mailed June 26, 2002.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-24 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,189,146 issued to Pradyumna K. Misra, et al. (*Misra*) in view of U.S. Patent No. 5,765,152 issued to John S. Erickson (*Erickson*) and U.S. Patent No. 6,269,343 issued to Matthew G. Pallakoff (*Pallakoff*). For at least the reasons set forth below, Applicants submit that claims 1-24 are not rendered obvious by *Misra*, *Erickson*, and *Pallakoff*.

Claim 1 recites the following (*emphasis added*):

An apparatus comprising:
a repository for storing a volume license agreement for a product;
a repository for maintaining a purchase history for the product;
a pricing generator to generate a purchase price for the product in accordance with the volume license agreement and the purchase history; and
a purchase generator to display the purchase price and transact a purchase of the product in response to a user request.

Thus, Applicants claim generating a purchase price for a product in accordance with a volume license agreement (VLA) for the product and a purchase history for the product. Claims 10 and 17 similarly recite generating a purchase price for a product in accordance with a VLA for the product and a purchase history for the product.

Misra discloses a software licensing system that includes a license generator located at a licensing clearinghouse and at least one license server and multiple clients located at a company or entity (see col. 2, lines 12-31). Applicants agree with the Examiner that *Misra* does not teach or suggest a method of pricing a product in accordance with a VLA for the product and a purchase history for the product (see Office Action, para. 4, p. 3).

Pallakoff discloses a marketing method and system that aggregates demand and provides demand-based pricing, in which prices go down as the volume of units sold goes up (see col. 1, lines 53-55; and col. 2, lines 27-28). *Pallakoff* does not teach or suggest pricing a product in accordance with a VLA for the product and a purchase history for the product. In fact, *Pallakoff* imposes **time and date limits** (see col. 6, lines 27-35; col. 7, lines 61-67; and col. 8, lines 1-4) that **preclude the use of historical purchasing data for a requested product in pricing of the product**. *Pallakoff* provides such limits to give buyers an incentive to act sooner and to make it easy for a seller to cancel an offer if demand is not sufficient (see col. 6, lines 32-35).

The purchase history of a product is irrelevant to the aggregate demand of a product during a buying cycle, which *Pallakoff* defines as a period during which buyers can indicate a desire to purchase the product (see col. 2, lines 41-44). At the end of the buying cycle, the price of the product is determined by the aggregate demand for the product that was expressed during the buying cycle and does not consider any demand for or purchases of the product prior to the buying cycle. By focusing solely on the demand for a product expressed during a buying cycle, the demand-based pricing of *Pallakoff* does not price a product in accordance with a purchase history for the product. Thus, *Pallakoff* neither cures the deficiencies of *Misra* nor discloses the type of pricing claimed in claims 1, 10, and 17. Therefore, no combination of *Misra* and *Pallakoff* teaches or suggests the invention as claimed in claims 1, 10, and 17.

Erickson discloses a system and method for the secure electronic copyright management and automatic identification of ownership of creative works distributed as digital or electronic media (see col. 3, lines 18-34). Nothing in *Erickson* teaches or suggests the pricing of a product in accordance with a VLA for the product and a purchase history for the product. Thus, *Erickson*

neither cures the deficiencies of *Misra* and *Pallakoff* nor discloses the type of pricing claimed in claims 1, 10, and 17. Therefore, no combination of *Misra*, *Pallakoff*, and *Erickson* teaches or suggests the invention as claimed in claims 1, 10, and 17.

The Office Action alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to have added a well-known practice of volume discount pricing method in conjunction with a past buying behavior method to a license management system (see para. 4, p. 4). Section 2144.03 of the Manual of Patent Examining Procedure states that the Examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art. Applicants respectfully request that the Examiner provide evidence demonstrating that the alleged facts are capable of instant and unquestionable demonstration as being well-known in the art. Applicants respectfully submit that even if the alleged facts are subject to official notice, and Applicants do not agree that they are, claims 1, 10, and 17 are not rendered obvious for at least the reasons set forth above.

Claims 2-9 depend from claim 1. Claims 11-16 depend from claim 10. Claims 18-24 depend from claim 17. Because dependent claims include the limitations of the claims from which they depend, Applicants submit that claims 2-9, 11-16, and 18-24 are not rendered obvious by *Misra*, *Erickson*, and *Pallakoff* for at least the reasons set forth above.

CONCLUSION

In view of the amendments and remarks made above, Applicants submit that the rejections have been overcome. Therefore, pending claims 1-24 are in condition for allowance and such action is respectfully solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number
02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION

The paragraph on page 3, lines 3-11:

Since prior art methods of administering VLAs are manual, they also do not take advantage of recent advances in the technology for licensing software and other electronic products, including the use of electronic commerce to electronically manage and distribute licenses for software and other [and] electronic products installed on remote computers. By not tracking the electronic purchase or distribution of a particular product, business administrators lose valuable opportunities for obtaining timely pricing discounts and controlling electronic asset costs by tracking and reconciling the electronic purchases of products sold under their VLAs.

The paragraph on page 3, lines 12-24:

Accordingly, a new approach for providing automated management of VLAs that facilitates timely discount pricing is desirable. An automated VLA can monitor purchases under the VLA in real-time and [insure] ensure that corporate customers 140 are always presented with the lowest possible cost products that are available under the terms of the VLA. An automated VLA can also enable publishers 110 to provide more up-to-date information about product offerings under the VLA, and enable distributors 120 and their corporate customers 140 to competitively negotiate and modify VLAs more rapidly in response to changing market conditions. The role of the corporate reseller 130 may be sharply reduced, if not completely eliminated, by facilitating the direct communication between the publisher 110 and corporate customer 140. The integration of the management of VLAs with electronic commerce in a user-friendly way presents a unique set of challenges, requiring a new and novel solution.

The paragraph from page 6, line 10, to page 7, line 7:

Referring now to **Figure 3**, wherein a block diagram illustrating the functional components of the AVLA method and apparatus are shown. The functional components include an AVLA rules engine 310, an AVLA pricing monitor 320, an AVLA purchaser interface 330, and an AVLA transaction database 340. Some of the functions performed by the AVLA rules engine 310 include accessing the VLAs pulled from the AVLA Clearinghouse 210, and extracting and maintaining the rules for automating the VLA, including, for example, the points credited for each product offered under the VLA, the number of points required for each discount step, and the percentage discount associated with each discount step. Some of the functions performed by the AVLA pricing monitor [220] 320 include accessing the historical purchasing data for a requested product, determining whether the discount step is current, and modifying the discount step, if necessary, in conjunction with the AVLA rules engine 310 and the historical purchasing data. In one embodiment, another function of the AVLA rules engine is to further determine whether discount pricing is available based on a profile of the AVLA client/user 260 requesting the product, to insure that only the appropriate AVLA client/users 260 are able to view and purchase products at that discounted price. Some of the functions performed by the

AVLA purchaser interface 330 include[,] obtaining the current discount step from the AVLA pricing monitor 320, and dynamically calculating and displaying the current price of a product in response to a purchase request by a AVLA client/user 260. The AVLA purchaser interface 330 is also responsible for maintaining the historical purchase data on the AVLA transaction database 340 for each product purchased under a VLA, and for facilitating the transaction of the purchase in response to a request by a AVLA client/user 260.

The paragraph on page 8, lines 12-26:

Referring now to **Figure 4**, wherein a block diagram of a general-purpose computer system upon which an embodiment of the present invention may be implemented is shown. As illustrated, general-purpose computer system 400 comprises a bus 401, or other communications hardware and software, for communicating information, and a processor 402 coupled with bus 401 for processing information. Computer system 400 further comprises a random access memory (RAM) or other dynamic storage device 402 (referred to as main memory), coupled to bus 401 for storing information and instructions to be executed by processor [402] 405. Computer system 400 also comprises a read only memory (ROM) 403, and/or other static storage device, coupled to bus 401 for storing static information and instructions for processor [402] 405. Mass storage device 404 is coupled to bus 401 for storing information and instructions. In one embodiment, mass storage device 404 includes a library of historical purchasing data and VLA rules used to automate the VLA under which the products are purchased by the various AVLA client/users 260.

The paragraph on page 12, lines 1-15:

The Order page 610 contains, among other items, at least one input area 620 to enter or select information that will identify the product for which a license is desired. A command button or other graphical visual icon 630 ("Get [Price] Pricing") is provided for affirmatively entering a command to obtain the latest pricing information for the selected product using the facilities of the AVLA. In a separate portion of the Order page 610, [is provided] an output area 640 is provided to display the results of entering the command to obtain the latest pricing information. The AVLA client/user 260 is further provided with command button or other graphical visual icon [650] 650 ("Purchase") to carry out the purchase after reviewing the price displayed in output area 640. The sequence of AVLA client/user interactions with the Order page 610 is summarized in Table 1. It should be understood that the Order page 610 as shown is for descriptive purposes only, and that other variations for accomplishing the described entry, selections or commands to the AVLA purchaser interface 330 may be employed without departing from the principles of or exceeding the scope of the present invention.

IN THE CLAIMS

1. (Amended) An apparatus [for use in a computer system] comprising:
 - a repository for storing a volume license agreement for a product;
 - a repository for maintaining a purchase history for the product;
 - a pricing generator to generate a purchase price for the product in accordance with the volume license agreement and the purchase history; and
 - a purchase generator to display the purchase price and transact a purchase of the product in response to a user request.